VIRGINIA SECTION

BANKS AND BANKING—TITLE TO BILL OF EXCHANGE DEPOSITED IN BANK AS CASH.—When a bill of exchange is deposited in bank with bill of lading attached, treated as cash, and placed to the depositor's credit subject to his check, the bank has legal title to the paper. This doctrine was laid down in the recent case of *Fourth National Bank* v. *Bragg*.[1]

The question of title to negotiable paper deposited in bank has arisen several times in the Virginia courts. Thus, in *Fayette National Bank* v. *Summers*,[2] the court laid down the principle that a deposit of a check or bill of exchange which the parties, at the time the deposit is made, intend to be treated as cash, passes the title of the instrument to the bank. But, as held in *Greensburg National Bank* v. *Syer*,[3] if it is the intention of the bank and the depositor that the instrument should not be received by the bank as cash but only for collection by the bank as agent, title remains in the depositor. Checks and bills of exchange deposited or credited, if intended to be for collection only, do not become the property of the bank even if the depositor has been allowed to check against the deposit before the paper is collected.[4]

Whether the parties intend when the instrument is deposited that it should be treated as cash or merely for collection is one of fact for the jury under all the facts and circumstances proven in the case relating thereto and throwing light thereon.[5]

In *Lynchburg Milling Co.* v. *National Exchange Bank*,[6] it was held that title to a bill of exchange made payable to a bank and deposited with it was *prima facie* in the bank under Section 24 of the Negotiable Instruments Law of Virginia, providing: "Every negotiable instrument is deemed *prima facie* to have been issued for a valuable consideration and every person whose signature appears thereon to have become a party thereto for value."[7] This presumption is rebuttable, but the burden is on him who seeks to overthrow it.

In *Fourth National Bank* v. *Bragg*,[8] the court apparently distinguishes that case from *Miller* v. *Norton*,[9] in which the bank was held not to acquire title when a check drawn on another bank was deposited, the amount being credited to the depositor subject to payment and no further evidence of the intention of the parties being alleged.

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[1] 102 S. E. 649.
[2] 105 Va. 689, 54 S. E. 862, 7 L. R. A. (N. S.) 694 and note, reviewing the authorities on this point at great length.
[3] 113 Va. 53, 73 S. E. 438.
[4] Greensburg National Bank *v.* Syer, *supra*.
[5] Fayette National Bank *v.* Summers, *supra*.
[6] 109 Va. 639, 64 S. E. 980.
[7] Va. Code, 1919, § 5586.
[8] *Supra*.
[9] 114 Va. 609, 77 S. E. 452.

In *Miller* v. *Norton,* the proposition was also laid down by way of *dictum* that the mere giving of credit to a depositor's account of a check does not constitute the bank a holder *for value,* but in order to have that effect, the credit must be drawn upon. For a discussion of this particular point, see 7 VA. LAW REV. 75.

The distinction between these two propositions must be carefully noted. To be a holder in due course, one must (1) have legal title, and must have taken the instrument (2) before maturity, (3) without notice of existing equities, and (4) for valuable consideration.[10] The question generally arises between a bank which has handled the paper and a creditor of the drawee; the decision then turns on whether the bank or the drawer has legal title to the proceeds, in which latter case the creditor may garnish or attach the proceeds. This is the main point of decision in the Virginia cases cited above. The further interesting question as to whether a bank is a holder *for value* by the mere giving of credit for a check on a depositor's account is governed by different principles.[11] In Virginia, there is no case directly covering this point; the *dictum* in *Miller* v. *Norton* and its reiteration in *Fourth National Bank* v. *Bragg* are the only authorities. It was the latter point which was discussed in 7 VA. LAW REV. 75.

E. W.

RECORDATION OF CONDITIONAL SALES CONTRACTS UNDER VA. CODE, 1919, § 5189.— § 2462 of the Code of 1887 provided in part as follows:

> "Every sale or contract for the sale of goods or chattels, wherein the title is reserved until the same be paid for in whole or in part, or the transfer of the title is made to depend on any condition, and possession be delivered to the vendee, shall be void as to creditors of, and purchasers for value without notice from, such vendee, unless such sale or contract be evidenced by writing executed by the vendor, in which the said reservation or condition is expressed, and until and except from the time the said writing is duly admitted to record in the county or corporation in which said goods or chattels may be. . . ."

The General Assembly of 1889-'90, in amending the section, required only a memorandum setting forth certain essential facts to be docketed where it was previously necessary to record the original writing.[1] The latter was to be indorsed with the words "memorandum docketed" by the clerk. Further changes were made in the section by the Acts of 1893-'94 and 1904, but they are not pertinent to this discussion.[2]

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[10] N. I. L. § 52; Va. Code, 1919, § 5614.
[11] Cf. 3 R. C. L. 524 and 3 R. C. L. 1055.
[1] Acts, 1889-'90, p. 108.
[2] Acts, 1893-'94, p. 422; Acts, 1904, p. 96.